ORIGINAL

IN THE SUPREME COURT OF OHIO

FirstCal Industrial 2 Acquisitions, LLC,	:	
Appellant,	:	Case No. 2009-1505
v.	:	
Franklin County Board of Revision, et al.,	:	Appeal from the Ohio Board of Tax Appeals
Appellees.	:	Case Nos. 2006-B-1789, 1790, 1791 and 1792 (Consolidated)

JOINT MERIT BRIEF OF APPELLEE BOARD OF EDUCATION OF THE HILLIARD CITY SCHOOL DISTRICT AND APPELLEE BOARD OF EDUCATIONOF THE SOUTH-WESTERN CITY SCHOOL DISTRICT

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INTRODUCTION

Appellant (FirstCal) purchased five industrial warehouses in Franklin County in a single cash transaction in September, 2005. FirstCal reported the sale of the five properties on one conveyance fee form and reported the total sale price of the five properties to be $34,336,121. As will be shown below, there was a ten million dollar or so difference between the Auditor's value of the five properties for tax year 2005 and the actual sale price of the properties: a sale price of $34,336,100 compared to the Auditor's values of only $24,750,000. The two boards of education, Appellees herein, filed five complaints with the Franklin County Board of Revision (BOR) based on the sale, with four of the properties being located in the Hilliard City School District and one in the South-Western City School District. Four of the properties involved in this sale are the subject of the present appeal.

While Appellant in its Merit Brief (p. 2) refers to eight properties, there are only five properties involved in the sale (as several parcels were listed twice and one parcel has two account numbers, one for the taxable portion of the property and one for the tax abated portion of the property). BTA Decision, fn. 5.

The Board of Revision consolidated all five of the cases for hearing and heard each of the complaints filed by the Boards of Education. The Appellant's attorney appeared, along with the local property tax manager for FirstCal, Bill McVeigh. Appellant's attorney acknowledged that the sale of the properties was an arm's-length sale and that the properties were offered on the open market by the Seller, Duke Realty, and that there were several bidders on the properties (BOR hearing on disc). Neither Appellant's attorney nor McVeigh explained how FirstCal determined the total sale price of $34,336,121 for the five properties or what value FirstCal had

placed on each of the five parcels during the course of the sale. Appellant produced no documents relating to the sale.

The sale price of the five properties, $34,336,121, was considerably more than the County Auditor's 2005 appraised values of the five properties, which was $24,750,000. The Board of Revision accepted the sale price of the five properties as the true value of the properties pursuant to R.C. 5713.03, and determined the true value of each of the five properties by allocating the sale price to the individual properties based on the Franklin County Auditor's recent appraisals of the properties for tax year 2005, in the same proportion that the appraised value of each property had to the total sale price. That is to say, the BOR accepted the Auditor's recent 2005 appraisals of the properties as evidence of the **relative value** of each of the properties while agreeing that each of the properties had been undervalued by the Auditor for tax year 2005 based on the actual sale price of the properties (the mathematical allocation, for say, parcel number 560-189895 was ($9,800,000 ÷ $24,750,000) x $34,336,121 [the sale price] = $13,595,700 (rounded). The BOR then added the adjustment of $32,200 to account for the second sale of the fifth parcel. The same calculation was used for parcels 040-004140 and 560-112021. For parcel 560-201732, the calculation was the same except for the adjustment of $32,900 to account for the second sale of the fifth parcel.

The values placed on the properties by the BOR were as follows:

Parcel No.	Auditor's Value	BOR Value	
040-004140	$7,900,000	10,992,000	
560-112021	$1,950,000	2,737,500	
560-189895	$9,800,000	13,627,900	
560-201732	$2,700,000	3,778,700	
560-191461	$2,400,000	3,200,000	(2nd sale price)
	$24,750,000	$34,336,100	

The last parcel referred to above (parcel number 560-191461), which is not involved in the present appeal, is a 98,000 square foot warehouse located at 3635 Zane Trace Drive, and this property would have had an allocated sale price of $3,329,400 as a result of the first sale of September, 2005 based on the allocations made by the BOR. However, Appellant FirstCal sold this property in March, 2006, for the sum of $3,200,000 to DZT Zane Trace. A stipulation of value was filed with the BOR for parcel 560-1941461 at the $3,200,000 sale price.

Appellant has never contested or challenged the accuracy of the BOR's valuation of the five properties as a result of the two sales discussed above. Appellant's strategy before the BTA was simple. Rather than presenting any evidence to the BTA to show what the actual allocation of the sale price was to each property, which would, of course, result in a ten million dollar increase in value for the five properties, Appellant's sole argument before the BTA was that "there was no evidence as to the proper allocation of value to each of the subject properties" (BTA Decision and Order, p. 8). This claim itself was incorrect. There is, indeed, evidence to support the BOR's reasonable allocation of Appellant's reported purchase price to the five parcels, which was based upon the County Auditor's recent appraisal of each property for tax year 2005 and the second sale of one of the properties. It is true that there was no evidence as to how Appellant arrived at the decision to pay $34,336,121 for the five parcels, or what value Appellant had placed on each individual property during the course of the sale negotiations, simply because Appellant chose to purposefully withhold that information from both the BOR and the BTA. In response to these arguments, the BTA correctly held that if Appellant disagreed in some manner with the values determined by the BOR, then it had the duty to present some evidence relating to how it determined what to pay for the properties or how it allocated that price to each of the five properties in a manner that was different than that done by the BOR. As

Appellant failed to present any evidence relating to either the value of the properties or the allocation of the sale price of the properties, it failed to carry its burden of proof. The BTA stated in its Decision and Order that "[w]e have no evidence from the appellant of another sale-based method of allocation or probative evidence establishing different values than those determined by the BOR" (Decision and Order, p. 13).

The BTA's decision below was reasonable and lawful and should be affirmed by this Court pursuant to R.C. 5717.04. This Court held the following in *Satullo v. Wilkins*, 111 Ohio St.3d 399, 2006 Ohio 5856, 856 N.E.2d 954, [P 14], quoting from *Am. Natl. Can Co. v. Tracy* (1995), 72 Ohio St.3d 150, 152, 648 N.E.2d 483, 1995 Ohio 42:

"[I]n reviewing a [BTA] decision, we determine whether that decision was 'reasonable and lawful.' R.C. 5717.04. While we reverse when we find legal error, the board itself 'is responsible for determining factual issues and, if the record contains reliable and probative support for these determinations,' this court will affirm them."

Proposition of Law No. 1:

> An Appellant Before The BTA Has The Burden To Prove That The Board of Revision's Determination Of The True Value Of Real Property Is Incorrect.

As the appellant before the BTA, FirstCal had the burden of proof. In *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566, 2001-Ohio-16, 740 N.E.2d 276, this Court held that "[t]he appellant before the BTA must present competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim." In *Gahanna-Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450, 2000-Ohio-216, this Court stated that an "appellant before the BTA *** had the burden to present evidence to prove that the true value that it asserted for the real property was correct." The BTA was correct

in holding that Appellant failed to present any competent and probative evidence to contest the BOR's determination of the true value of Appellant's five warehouses, or to present any competent and probative evidence relating to the details of the sale of the five properties.

It must be emphasized that there is no competent and probative evidence of any kind to support any of the claims made by Appellant FirstCal in the "Statement of Facts" section of its Merit Brief (pages 1 to 3), relating to a "bulk sale" or the purchase of an "entire portfolio" of properties, or to the absence of an allocation of the sale price to the five properties in the purchase agreement, and all such other claims relating to the sale of the five properties. All of Appellant's claims in this regard are based on the statements made by Appellant's attorney at the BOR and the BTA and on the hearsay testimony of William McVeigh, the only witness Appellant presented to the BOR (Appellant presented no witnesses to the BTA at its hearing). As such, there is no evidence in the record to support FirstCal's claims that the sale was a "bulk sale" or that there was no proper allocation of the sale price to the five properties agreed to by the parties, or that FirstCal did not itself make a proper allocation of the sale price to the five properties. Neither the BOR nor the BTA appear to have relied on the statements of Appellant's attorney or on McVeigh's testimony concerning the details of the sale of the five properties that took place in September, 2005.

A. Statements of Counsel Are Not Evidence In A BOR and BTA Proceedings.

The statements of Appellant's counsel concerning the details of a sale of the five properties involved in this appeal are not evidence in a BOR or BTA proceedings. In *HK New Plan Exchange Property Owner II, L.L.C. v. Hamilton Cty. Bd. of Revision,* 122 Ohio St.3d 438, 2009-Ohio-3546, at [P13], this Court affirmed the BTA holding that "counsel's statements" do not constitute evidence in a BTA proceeding:

"The [BTA] board concluded that counsel's statement, standing alone, did not 'invalidate the subject sale' as an indicator of true value Quite simply, the board did not agree with the assertion that the statement, in the absence of other evidence, sufficed to prove the existence of a bulk sale and the allocation of a bulk-sale price."

In *Hardy v Delaware County Board f Revision*, 106 Ohio St. 3d 359; 2005-Ohio-5319; 835 N.E.2d 348; 2005 Ohio Lexis 2258, this Court stated that "of course 'statements of counsel are not evidence.' *Corporate Exch. Buildings IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 299, 695 N.E.2d 743." In *Hardy*, supra, this Court further stated that "[t]he absence of witnesses on such a critical issue and the limited explanation that the property owners offered through their lawyer about the documents they presented could rightly have prompted the BTA to conclude that the property owners had not met their burden of showing" that the BOR decision was incorrect. [P13]. This statement is perfectly applicable to the present appeal.

B. McVeigh's Testimony Was Not Competent And Probative Evidence.

Appellant's only witness, Bill McVeigh, was neither an employee nor an officer of the buyer (FirstCal) or the seller (Duke Realty) of the properties, but rather an independent tax manager, who testified that he was given information by one the parties involved in sale of September, 2005, in order to recalculate the amount of real property taxes that tenants would have to pay based on the higher sale prices of the properties under the tax pass-through provisions in the various leases. While McVeigh testified that he had seen an "allocation sheet" resulting from the sale of September, 2005, neither he nor Appellant produced such a document (BOR hearing on disc). None of McVeigh's testimony concerning the sale of September, 2005, constituted competent and probative evidence.

C. The Purchase Agreement Was Not Competent And Probative Evidence.

At the BTA hearing held on April 23, 2008, Appellant's counsel produced what he claimed was a copy of the "Agreement for Purchase and Sale" of the five properties involved in this appeal (Appellant's BTA Exhibit 2) and requested that the agreement be admitted into evidence. Objections were made by Appellees' counsel to the purchase agreement on the grounds that no witness was present at the BTA to either identify or to authenticate the document and that the document had not been presented to BOR (BTA Tr. p. 12 and 14). The BTA reserved ruling on the objections (BTA T r. p. 16). In its decision, the BTA overruled Appellees' objection to the document on the grounds that Appellant was not a "complainant" under R.C. 5715.19(G) (Decision and Order, p. 6), but it never ruled on objections that no one had ever identified the document or authenticated the document for evidentiary purposes. Furthermore, the BTA did not specifically admit the document into evidence in its decision.

The "Agreement for Purchase and Sale" does show how parties to real estate transactions sometime conspire to violate Ohio law in an effort to avoid filing a conveyance fee form that discloses the sale price of the individual properties and to avoid paying the conveyance fee of the statutory amount of $1 per each one thousand dollars of the sale price plus any additional fee (or piggy-back fee) imposed by the county commissioners under R.C. 322.02 of up to $3 per thousand dollars of the sale price. Section 19.13 of Appellant's Agreement for Sale and Purchase (p. 45) provides that Duke Realty, the seller, will transfer title to all of the "Projects located in Ohio" to a new company created by the Seller called "Newco." Presumably Duke would then file an exempt conveyance fee form (Form 100 EX), noting thereon that the conveyance was exempt from the conveyance fee because no consideration was paid for the property under RC. 319.54(F)(3). The second part of the plan takes place when the purchase

agreement then provided that FirstCal "shall acquire the Ohio projects by an assignment of one hundred percent (100%) of the membership interests in Newco." This would close the arm's-length sale of the properties from Duke to FirstCal. In this case, FirstCal would not even have to file a conveyance fee form or pay the conveyance fee because no transfer of title of the real estate had taken place. By these devices, the parties avoid having to pay any conveyance fee or to file a conveyance fee form which reports the actual sale of the property and the actual prices paid for the properties. The purchase agreement also describes what the "liabilities" of the two parties will be if "any government authority having jurisdiction over any or all of the Ohio Projects successfully challenges the means by which Buyer acquires the Ohio Projects without having paid transfer taxes" (p. 46).

Admittedly, the parties did not carry out these particular terms of the purchase agreement because the transfer of the properties was made from Duke Realty directly to FirstCal and a conveyance fee form was filed which disclosed the total sale price of the five properties as $34,336,121. However, this provision appears consistent with FirstCal's refusal to provide any competent and probative evidence relating to the sale and to its refusal to provide any information regarding the manner in which the sale price was determined and the determination of the value of any of the five properties involved in the sale. It is difficult to believe that the claims made by FirstCal before the Board of Revision were true: that is, that FirstCal paid a fixed sum for five separate properties without determining what each of the five properties was worth.

D. The Boards Of Education Had No Duty To Present To The Board Of Revision Any 'Information Or Evidence' Not Within The 'Knowledge Or Possession' Of The Boards of Education.

The duty of any "party" to a board of revision proceeding to present "information or evidence" relating to the property or to the value thereof is established by statute. The

fundamental principle is established by R.C. 5715.19(G), and is that a party to a board of revision proceeding is required to present to the Board all "all information or evidence within his knowledge or possession" which relates to the value of the property. R.C. 5715.19(G) reads as follows:

"(G) A complainant shall provide to the board of revision all information or evidence within his knowledge or possession that affects the real property that is the subject of his complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for his failure to provide the information or evidence to the board of revision."

The legislative principle is consistent with traditional rules of evidence. As was said in *Olszowy v. The Cleveland Ry. Co.* (1934), 47 Ohio App. 529, pp. 532-533, wherein the Court stated that "[I]t is a fundamental law of evidence that, if the information sought to be elicited lies peculiarly with the defendant, the plaintiff is exempted from the burden of proving the same."

Under this principle, the Appellee Boards of Education were not required to present to the Franklin County Board of Revision any "information or evidence" relating the specific details of Appellant's purchase of the five properties involved in this appeal, such as whether the sale was a bulk sale, or whether an allocation of the sale price was set forth in the purchase agreement, or whether the parties to the sale had agreed to an allocation in some other way, or whether FirstCal, as the buyer of the property, had made its own allocation of the sale price to the five properties. All of the "information or evidence" relating to the details of the sale was "within [the] knowledge or possession" of FirstCal, and not "within [the] knowledge or possession" of the Boards of Education.

If FirstCal claimed that there were no allocations made to the five parcels as a result of the sale (which seems inconsistent with McVeigh's testimony before the BOR that he was given and had reviewed the "allocation sheets"), or if it claims that allocations were made that were different than the values established by the BOR, then FirstCal had the duty to present that information to the BOR and to the BTA in its appeal.

Proposition of Law No. 2:

> The BTA May Affirm A Board Of Revision's Determination Of The True Value Of Real Property Based On An Allocation Of A Single Sale Price When There Is Corroborating Indicia To Ensure That The Allocation Reflects The True Value Of The Property.

There was evidence in the record before the BTA to support its affirmation of the BOR's determination of the true value of the four properties involved in this appeal based on a reasonable allocation of the reported purchase price of the properties. In *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, 875 N.E.2d 85, this Court stated as follows: "In bulk sale cases, we typically look for corroborating indicia to ensure that the allocation reflects the true value of the property. Where attendant evidence shows reason to doubt such a correspondence, we decline to use the allocation to establish true value." [P17]

In this case, both the BOR and the BTA were entitled to conclude as a factual matter that there was "corroborating indicia" or evidence in the record to support the BOR's allocation of the single sale price to the five individual properties. There is no valid reason to "doubt" the validity of the BOR's allocation of the single sale price to the five properties. The corroborating evidence in this case consists of the following:

(1) The BOR's values were based on the County Auditor's appraisals of the property for tax year 2005, which established the relative value of the five properties to each other for

purposes of allocating the $9,586,200 difference between the Auditor's individual values and the actual sale price of the five properties;

(2) The second sale of one of the parcels involved for essentially what would have been the allocated value of the property: a second sale price of this property for $3,200,000 compared to what would have been the allocated value of $3,329,400;

(3) McVeigh's testimony before the BOR that he had been given an "allocation sheet" that appears to have reflected the allocation of the sale price to the individual properties, which FirstCal failed to provide to the BOR or to the BTA;

(4) The failure of Appellant to provide any competent and probative evidence relating to any of the claims made by Appellant about the sale. FirstCal did not think the BOR and BTA proceedings were important enough, or it did not disagree with the values determined by the BOR based upon its allocations, to provide the BTA with any valid evidence to support any of its claims; and

(5) The implausibility of FirstCal claims: how could FirstCal determine a single sale price for the five properties if it did not place some kind of value on the individual properties during the course of the sale of the properties?

In *Blatt v. Hamilton Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-5260, 915 N.E.2d 1196, this Court affirmed the BTA's allocation of a sale price to the value of the land portion of a parcel involved in the sale, holding that the allocation was not unreasonable or unlawful. According to this Court:

"The BTA then calculated the land value by using 70 percent of the $534,000 sale price, reasoning that Blatt purchased both the land and the house upon the land. To allocate the

amount of the purchase price between the land and the former house, the BTA relied on the ratio of land value to total value from the property record card from tax year 2003. *Blatt* ¶ 18. We have repeatedly stated that the 'fair market value of property for tax purposes is a question of fact, the determination of which is primarily within the province of the taxing authorities, and this court will not disturb a decision of the Board of Tax Appeals with respect to such valuation unless it affirmatively appears from the record that such decision is unreasonable or unlawful.' [citation omitted]." *Blatt* ¶ 19.

The Court went to hold: "It does not seem unreasonable to apportion the total sale price between the existing house and the land value. The BTA used a land-value to total-value ratio to determine the portion of the sale price that reflected the value of the land. We now defer to the BTA's reasoning as part of its fact-finding expertise."[1] *Blatt* ¶21. Therefore, it was not unreasonable in the absence of allocation evidence to the contrary for the BTA to affirm the BOR's decision to use a pro-rata allocation between the parcels based upon the Auditor's previous relative valuations.

FirstCal was incorrect in claiming that there was no evidence to support the allocations. The Auditor's appraisals, along with all of the other evidence outlined above, were sufficient to establish the relative values of the five properties involved in the sale on the basis of which the excess value reflected in the sale price could reasonably be apportioned. FirstCal could not then claim that there was no evidence to support the allocation, but rather it had the burden to present evidence to refute the allocations made by the BOR. As this Court has consistently held, "the fair market value of property for tax purposes is a question of fact." In *HK New Plan Exchange Property Owner II, L.L.C. v. Hamilton Cty. Bd. of Revision*, 122 Ohio St.3d 438, 2009-Ohio-

[1] The dissenting opinion in *Blatt* disagreed with the majority opinion because the BTA used a prior year's valuation to determine the allocation for the current tax year. This is not an issue in the present case as the allocations herein were based upon the Auditor's relative values for the current tax year.

3546, this Court most recently repeated the well-established principle that "this court 'is not a super BTA or a trier of fact de novo'" (citations omitted) [P 14]. The BTA was correct in holding that FirstCal failed to present any competent and probative evidence to show that the values determined by the BOR were inaccurate or incorrect. FirstCal failed to carry its burden of proof before the BTA.

In its Merit Brief, FirstCal relies primarily on the case of *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 695 N.E.2d 743, for the claim that the Boards of Education were required to present evidence to the BOR or BTA proving how FirstCal had allocated the sale price to the five properties involved in the sale. Such a requirement would, of course, prevent the use of the sale price to value the properties because the Boards of Education did not have evidence relating to the allocations in its possession. Furthermore, the failure of FirstCal to respond to the discovery requests of the Boards of Education and to the BTA's order compelling discovery prevented the Boards of Education from discovering any relevant information concerning the sale of the properties. The Appellee Boards of Education attempted to discover all of the documents relating to FirstCal's purchase of the properties under the BTA's discovery rules. When FirstCal failed to respond to the discovery requests, the Boards of Education filed a motion to compel discovery with the BTA, which was granted by the BTA on March 30, 2007. When FirstCal failed to comply with the BTA's discovery order, the Boards of Education were forced to file a motion for sanctions with the BTA. The BTA granted the motion for sanctions on January 18, 2008. In its order granting sanctions, the BTA ordered that FirstCal's attorney "shall pay to BOEs' counsel a sanctions penalty in the amount of the $480 fee requested" (Order Granting Motions for Sanctions, p. 7).

Despite all of this, Appellant still failed to produce the requested documents including the "allocation sheets" given to Mr. McVeigh.

This Court's decision in *Corporate Exchange Bldgs.*, supra, is not applicable to the appeal at hand on the valuation issues, while it is applicable for the principle that "statements of counsel are not evidence" in a BOR or BTA proceeding. It is not applicable to the valuation issue for two reasons. First, FirstCal was the appellant before the BTA and it had the burden to produce some evidence showing that the BOR's values were incorrect. Second, there was some evidence in the record to support the BOR's values for the properties.

In *Corporate Exchange Bldgs.*, supra, the property owner attempted to rely on a single sale price of two separate properties to obtain a reduction in the true value of the two properties. The only evidence relating to an allocation was the statements made by the property owner's attorney that the allocation of the purchase should be "based on rentable square feet" of each of the two separate buildings involved in the sale (82 Ohio St.3d, at 299, 695 N.E.2d, at 744). As to the validity of the evidence on this issue, this Court noted that "the only reference in the BTA record as to how the allocation could be made is contained in the opening statement of counsel for Partnership. He stated that the purchase price was allocated based on square footage" of the two buildings (Ibid.). The BTA properly rejected the allocation proposed by the owner's counsel because "statements of counsel are not evidence" and because the property owner failed to present "sufficient competent and probative evidence to meet its burden of proof" (82 Ohio St.3d, at 299, 695 N.E.2d, at 745). Unlike the case in *Corporate Exchange Bldgs.*, supra, there is evidence in the present appeal to support the allocations made by the BOR and the BTA.

CONCLUSION

For the reasons set forth herein, this Court is respectfully requested to affirm the decision of the Ohio Board of Tax Appeals.

Respectfully submitted,

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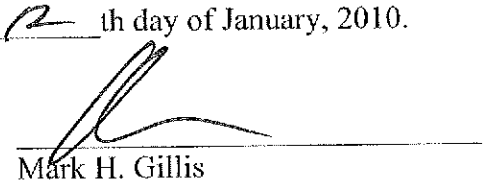
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing brief of Appellees was served upon Wayne E. Petkovic, 840 Brittany Drive, Delaware, Ohio, 43015 and Paul Stickel, Assistant County Prosecutor, 373 South High Street, 20th Floor, Columbus, Ohio 45215, and Richard Cordray, Ohio Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, by regular U.S. mail, postage prepaid, this 12th day of January, 2010.



Mark H. Gillis

319.54 Fees to compensate for auditor's services.

(A) On all moneys collected by the county treasurer on any tax duplicate of the county, other than estate tax duplicates, and on all moneys received as advance payments of personal property and classified property taxes, the county auditor, on settlement with the treasurer and tax commissioner, on or before the date prescribed by law for such settlement or any lawful extension of such date, shall be allowed as compensation for the county auditor's services the following percentages:

(1) On the first one hundred thousand dollars, two and one-half per cent;

(2) On the next two million dollars, eight thousand three hundred eighteen ten-thousandths of one per cent;

(3) On the next two million dollars, six thousand six hundred fifty-five ten-thousandths of one per cent;

(4) On all further sums, one thousand six hundred sixty-three ten-thousandths of one per cent.

If any settlement is not made on or before the date prescribed by law for such settlement or any lawful extension of such date, the aggregate compensation allowed to the auditor shall be reduced one per cent for each day such settlement is delayed after the prescribed date. No penalty shall apply if the auditor and treasurer grant all requests for advances up to ninety per cent of the settlement pursuant to section 321.34 of the Revised Code. The compensation allowed in accordance with this section on settlements made before the dates prescribed by law, or the reduced compensation allowed in accordance with this section on settlements made after the date prescribed by law or any lawful extension of such date, shall be apportioned ratably by the auditor and deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, municipal corporations, and school districts.

(B) For the purpose of reimbursing county auditors for the expenses associated with the increased number of applications for reductions in real property taxes under sections 323.152 and 4503.065 of the Revised Code that result from the amendment of those sections by Am. Sub. H.B. 119 of the 127th general assembly, there shall be paid from the state's general revenue fund to the county treasury, to the credit of the real estate assessment fund created by section 325.31 of the Revised Code, an amount equal to one per cent of the total annual amount of property tax relief reimbursement paid to that county under sections 323.156 and 4503.068 of the Revised Code for the preceding tax year. Payments made under this division shall be made at the same times and in the same manner as payments made under section 323.156 of the Revised Code.

(C) From all moneys collected by the county treasurer on any tax duplicate of the county, other than estate tax duplicates, and on all moneys received as advance payments of personal property and classified property taxes, there shall be paid into the county treasury to the credit of the real estate assessment fund created by section 325.31 of the Revised Code, an amount to be determined by the county auditor, which shall not exceed the percentages prescribed in divisions (C)(1) and (2) of this section.

(1) For payments made after June 30, 2007, and before 2011, the following percentages:

(a) On the first five hundred thousand dollars, four per cent;

(b) On the next five million dollars, two per cent;

(c) On the next five million dollars, one per cent;

(d) On all further sums not exceeding one hundred fifty million dollars, three-quarters of one per cent;

(e) On amounts exceeding one hundred fifty million dollars, five hundred eighty-five thousandths of one per cent.

(2) For payments made in or after 2011, the following percentages:

(a) On the first five hundred thousand dollars, four per cent;

(b) On the next ten million dollars, two per cent;

(c) On amounts exceeding ten million five hundred thousand dollars, three-fourths of one per cent.

Such compensation shall be apportioned ratably by the auditor and deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, municipal corporations, and school districts.

(D) Each county auditor shall receive four per cent of the amount of tax collected and paid into the county treasury, on property omitted and placed by the county auditor on the tax duplicate.

(E) On all estate tax moneys collected by the county treasurer, the county auditor, on settlement semiannually with the tax commissioner, shall be allowed, as compensation for the auditor's services under Chapter 5731. of the Revised Code, the following percentages:

(1) Four per cent on the first one hundred thousand dollars;

(2) One-half of one per cent on all additional sums.

Such percentages shall be computed upon the amount collected and reported at each semiannual settlement, and shall be for the use of the general fund of the county.

(F) On all cigarette license moneys collected by the county treasurer, the county auditor, on settlement semiannually with the treasurer, shall be allowed as compensation for the auditor's services in the issuing of such licenses one-half of one per cent of such moneys, to be apportioned ratably and deducted from the shares of the revenue payable to the county and subdivisions, for the use of the general fund of the county.

(G) The county auditor shall charge and receive fees as follows:

(1) For deeds of land sold for taxes to be paid by the purchaser, five dollars;

(2) For the transfer or entry of land, lot, or part of lot, or the transfer or entry on or after January 1, 2000, of a used manufactured home or mobile home as defined in section 5739.0210 of the Revised Code, fifty cents for each transfer or entry, to be paid by the person requiring it;

(3) For receiving statements of value and administering section 319.202 of the Revised Code, one dollar, or ten cents for each one hundred dollars or fraction of one hundred dollars, whichever is greater, of the value of the real property transferred or, for sales occurring on or after January 1, 2000, the value of the used manufactured home or used mobile home, as defined in section 5739.0210 of the Revised Code, transferred, except no fee shall be charged when the transfer is made:

(a) To or from the United States, this state, or any instrumentality, agency, or political subdivision of the United States or this state;

(b) Solely in order to provide or release security for a debt or obligation;

(c) To confirm or correct a deed previously executed and recorded or when a current owner on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property is a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services

employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation and is changing the current owner name listed on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property to the initials of the current owner as prescribed in division (B)(1) of section 319.28 of the Revised Code;

(d) To evidence a gift, in trust or otherwise and whether revocable or irrevocable, between husband and wife, or parent and child or the spouse of either;

(e) On sale for delinquent taxes or assessments;

(f) Pursuant to court order, to the extent that such transfer is not the result of a sale effected or completed pursuant to such order;

(g) Pursuant to a reorganization of corporations or unincorporated associations or pursuant to the dissolution of a corporation, to the extent that the corporation conveys the property to a stockholder as a distribution in kind of the corporation's assets in exchange for the stockholder's shares in the dissolved corporation;

(h) By a subsidiary corporation to its parent corporation for no consideration, nominal consideration, or in sole consideration of the cancellation or surrender of the subsidiary's stock;

(i) By lease, whether or not it extends to mineral or mineral rights, unless the lease is for a term of years renewable forever;

(j) When the value of the real property or the manufactured or mobile home or the value of the interest that is conveyed does not exceed one hundred dollars;

(k) Of an occupied residential property, including a manufactured or mobile home, being transferred to the builder of a new residence or to the dealer of a new manufactured or mobile home when the former residence is traded as part of the consideration for the new residence or new manufactured or mobile home;

(l) To a grantee other than a dealer in real property or in manufactured or mobile homes, solely for the purpose of, and as a step in, the prompt sale of the real property or manufactured or mobile home to others;

(m) To or from a person when no money or other valuable and tangible consideration readily convertible into money is paid or to be paid for the real estate or manufactured or mobile home and the transaction is not a gift;

(n) Pursuant to division (B) of section 317.22 of the Revised Code, or section 2113.61 of the Revised Code, between spouses or to a surviving spouse pursuant to section 5302.17 of the Revised Code as it existed prior to April 4, 1985, between persons pursuant to section 5302.17 or 5302.18 of the Revised Code on or after April 4, 1985, to a person who is a surviving, survivorship tenant pursuant to section 5302.17 of the Revised Code on or after April 4, 1985, or pursuant to section 5309.45 of the Revised Code;

(o) To a trustee acting on behalf of minor children of the deceased;

(p) Of an easement or right-of-way when the value of the interest conveyed does not exceed one thousand dollars;

(q) Of property sold to a surviving spouse pursuant to section 2106.16 of the Revised Code;

(r) To or from an organization exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, provided such transfer is without consideration and is in furtherance of the charitable or public purposes of such organization;

(s) Among the heirs at law or devisees, including a surviving spouse, of a common decedent, when no consideration in money is paid or to be paid for the real property or manufactured or mobile home;

(t) To a trustee of a trust, when the grantor of the trust has reserved an unlimited power to revoke the trust;

(u) To the grantor of a trust by a trustee of the trust, when the transfer is made to the grantor pursuant to the exercise of the grantor's power to revoke the trust or to withdraw trust assets;

(v) To the beneficiaries of a trust if the fee was paid on the transfer from the grantor of the trust to the trustee or if the transfer is made pursuant to trust provisions which became irrevocable at the death of the grantor;

(w) To a corporation for incorporation into a sports facility constructed pursuant to section 307.696 of the Revised Code;

(x) Between persons pursuant to section 5302.18 of the Revised Code;

(y) From a county land reutilization corporation organized under Chapter 1724. of the Revised Code to a third party.

The auditor shall compute and collect the fee. The auditor shall maintain a numbered receipt system, as prescribed by the tax commissioner, and use such receipt system to provide a receipt to each person paying a fee. The auditor shall deposit the receipts of the fees on conveyances in the county treasury daily to the credit of the general fund of the county, except that fees charged and received under division (G)(3) of this section for a transfer of real property to a county land reutilization corporation shall be credited to the county land reutilization corporation fund established under section 321.263 of the Revised Code.

The real property transfer fee provided for in division (G)(3) of this section shall be applicable to any conveyance of real property presented to the auditor on or after January 1, 1968, regardless of its time of execution or delivery.

The transfer fee for a used manufactured home or used mobile home shall be computed by and paid to the county auditor of the county in which the home is located immediately prior to the transfer.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 7/17/2009.

Effective Date: 04-09-2001; 2007 HB119 06-30-2007; 2008 HB46 09-01-2008; 2008 SB353 04-07-2009

322.02 Real property transfer tax.

(A) For the purpose of paying the costs of enforcing and administering the tax and providing additional general revenue for the county, any county may levy and collect a tax to be known as the real property transfer tax on each deed conveying real property or any interest in real property located wholly or partially within the boundaries of the county at a rate not to exceed thirty cents per hundred dollars for each one hundred dollars or fraction thereof of the value of the real property or interest in real property located within the boundaries of the county granted, assigned, transferred, or otherwise conveyed by the deed. The tax shall be levied pursuant to a resolution adopted by the board of county commissioners of the county and, except as provided in division (A) of section 322.07 of the Revised Code, shall be levied at a uniform rate upon all deeds as defined in division (D) of section 322.01 of the Revised Code. Prior to the adoption of any such resolution, the board of county commissioners shall conduct two public hearings thereon, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing. The tax shall be levied upon the grantor named in the deed and shall be paid by the grantor for the use of the county to the county auditor at the time of the delivery of the deed as provided in section 319.202 of the Revised Code and prior to the presentation of the deed to the recorder of the county for recording.

(B) No resolution levying a real property transfer tax pursuant to this section or a manufactured home transfer tax pursuant to section 322.06 of the Revised Code shall be effective sooner than thirty days following its adoption. Such a resolution is subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into immediate effect. An emergency measure must receive an affirmative vote of all of the members of the board of commissioners, and shall state the reasons for the necessity. A resolution may direct the board of elections to submit the question of levying the tax to the electors of the county at the next primary or general election in the county occurring not less than seventy-five days after the resolution is certified to the board. No such resolution shall go into effect unless approved by a majority of those voting upon it.

Effective Date: 09-29-1999

5715.19 Complaint against valuation or assessment - determination of complaint - tender of tax - determination of common level of assessment.

(A) As used in this section, "member" has the same meaning as in section 1705.01 of the Revised Code.

(1) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

(a) Any classification made under section 5713.041 of the Revised Code;

(b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;

(c) Any recoupment charge levied under section 5713.35 of the Revised Code;

(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(f) Any determination made under division (A) of section 319.302 of the Revised Code.

Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

(2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.24 of the Revised Code applies and each subsequent tax year until the tax year in which that section applies again.

No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax

lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

(a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;

(b) The property lost value due to some casualty;

(c) Substantial improvement was added to the property;

(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property.

(3) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.13 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law, the party affected by a decrease in valuation or the party's agent, or the person owning taxable real property in the county or in a taxing district with territory in the county, may refile the complaint, notwithstanding division (A)(2) of this section.

(B) Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner's spouse, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education; a property owner; the owner's spouse; an individual who is retained by such an owner and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; or, if the property owner is a firm, company, association, partnership, limited liability company, corporation, or trust, an officer, a salaried employee, a partner, a member, or trustee of that property owner, may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.

(C) Each board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard. The board of revision shall hear and render its decision on a complaint within ninety days after the filing thereof with the board, except that if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section, the board shall hear and render its decision within ninety days after such filing.

(D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any

amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section.

(E) If a taxpayer files a complaint as to the classification, valuation, assessment, or any determination affecting the taxpayer's own property and tenders less than the full amount of taxes or recoupment charges as finally determined, an interest charge shall accrue as follows:

(1) If the amount finally determined is less than the amount billed but more than the amount tendered, the taxpayer shall pay interest at the rate per annum prescribed by section 5703.47 of the Revised Code, computed from the date that the taxes were due on the difference between the amount finally determined and the amount tendered. This interest charge shall be in lieu of any penalty or interest charge under section 323.121 of the Revised Code unless the taxpayer failed to file a complaint and tender an amount as taxes or recoupment charges within the time required by this section, in which case section 323.121 of the Revised Code applies.

(2) If the amount of taxes finally determined is equal to or greater than the amount billed and more than the amount tendered, the taxpayer shall pay interest at the rate prescribed by section 5703.47 of the Revised Code from the date the taxes were due on the difference between the amount finally determined and the amount tendered, such interest to be in lieu of any interest charge but in addition to any penalty prescribed by section 323.121 of the Revised Code.

(F) Upon request of a complainant, the tax commissioner shall determine the common level of assessment of real property in the county for the year stated in the request that is not valued under section 5713.31 of the Revised Code, which common level of assessment shall be expressed as a percentage of true value and the common level of assessment of lands valued under such section, which common level of assessment shall also be expressed as a percentage of the current agricultural use value of such lands. Such determination shall be made on the basis of the most recent available sales ratio studies of the commissioner and such other factual data as the commissioner deems pertinent.

(G) A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

(H) In case of the pendency of any proceeding in court based upon an alleged excessive, discriminatory, or illegal valuation or incorrect classification or determination, the taxpayer may tender to the treasurer an amount as taxes upon property computed upon the claimed valuation as set forth in the complaint to the court. The treasurer may accept the tender. If the tender is not accepted, no penalty shall be assessed because of the nonpayment of the full taxes assessed.

Effective Date: 03-04-2002; 09-28-2006